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EX PARTE

July 11, 2002

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TWB-204  
Washington, DC 20554

Re: CC Docket No. 01-337, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services

AT&T submits this *ex parte* response to the Regional Bell Operating Companies' ("Bells") reply comments in the above-captioned proceeding. As AT&T and others demonstrated in their comments, the Bells retain pervasive market power in the residential and business broadband markets, both retail and wholesale. The Bells attempt to counter aspects of this showing in their reply comments, but their efforts are unavailing and their requests for nondominant treatment must be denied.

**I. ILECS HAVE PERVASIVE MARKET POWER IN THE PROVISION OF BROADBAND SERVICES.**

The Bells' own economists concede that the economically relevant markets are local.<sup>1</sup> The Bells contend that these local markets can be addressed globally because they, "exhibit sufficiently similar competitive characteristics." Yet, the Commission has properly ruled that broadband competition "is not uniform across the nation"<sup>2</sup> and, indeed, that in a substantial number of local markets, there is only a single broadband supplier. Even SBC admits there are some areas in which DSL is available but cable modem is not.<sup>3</sup>

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<sup>1</sup> Haring-Shooshan Statement, Qwest, at 7; Harris Reply Decl., BellSouth, at 4.

<sup>2</sup> *Inquiry Concerning the Development of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Second Report, 15 FCC Rcd 20913, ¶ 1 (2000).

<sup>3</sup> SBC Reply at 19.

As the Commission made clear in the *LEC Classification Order*, it will examine aggregate markets only if there is “no credible evidence that there is or could be a lack of competitive performance in any point-to-point market for that service.”<sup>4</sup> The record here is filled with evidence of the lack of competition in various locales.<sup>5</sup> Indeed, the Commission’s recent determination that over 40% of local markets have only one broadband supplier confirms that aggregate market analysis would conflict with Commission precedent and basic economic principles. Moreover, unlike the situation in the *LEC Classification Order*, the Bells are not subject to geographic rate averaging, and are free to charge different prices in different locations. Unsurprisingly, the Bells have done precisely that.<sup>6</sup> The D.C. Circuit has likewise recently held that the Commission cannot ignore relevant variations in local market conditions, even where the Commission purports to act on a national basis to promote national goals.<sup>7</sup>

#### **A. Large Business Services**

As AT&T demonstrated, the Bells’ citation to national market-share statistics is completely irrelevant to this proceeding because, until recently, the Bells have been restricted to local markets. Local numbers make clear that the Bells have dominated everywhere they have been allowed to compete.<sup>8</sup> Indeed, none of the Bells denies that they overwhelmingly dominate the provision of the “local” frame relay and ATM services they are allowed to provide, with shares of 90 percent or more.<sup>9</sup>

AT&T and others also showed that the Bells have used their control over local connections to create a price squeeze. Although Verizon questions whether a price squeeze has actually occurred, neither it nor any other Bell has submitted any data to rebut AT&T’s showing, despite the fact that they have the actual data. And, SBC’s claim that IXCs’ intraLATA market shares are low because IXCs “have chosen to price themselves out of

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<sup>4</sup> 12 FCC Rcd 15756, ¶ 66.

<sup>5</sup> See, e.g., AT&T Comments at 24-25, 43 n.127; MoPSC Comments at 3; Fred Williamson Comments at 9; ALTS Comments at 6; California Reply at 11-13; WorldCom Reply at 2-4; GSA Reply at 5-6.

<sup>6</sup> See AT&T Reply at 10 & nn. 26, 27 (citing to RBOCs’ websites).

<sup>7</sup> See *USTA v. FCC*, No. 00-1012, 2002 WL 1040574 (D.C. Cir. May 24, 2002) at 7-9.

<sup>8</sup> AT&T Comments at 23-26; AT&T Reply at 11.

<sup>9</sup> Verizon criticizes the “data on which AT&T relies,” claiming it is unclear how this data has been segregated between local and national markets. Verizon Reply Comments at 35. Were this a valid criticism, it would undermine the Bells’ position, which has relied on the same data ever since SBC filed its petition. See Crandall/Sidak Decl., SBC Petition at nn. 165-67; 168-69; 171-76, 178-80; see also Verizon Comments, Broadband Fact Report, nn. 139-41, 143-44, 152, 154, 163.

the market” is utter nonsense. AT&T’s local ATM and Frame Relay prices are high because of the Bells’ price squeezes.<sup>10</sup>

SBC contends, however, that any Bell ability to leverage a special access monopoly is no basis for regulation of the Bells’ broadband services, because such leveraging power should be regulated directly. But the Bells cannot have it both ways. The Bells have successfully convinced the Commission to grant pricing flexibility for special access services. They cannot now argue that their market power can be curtailed through stringent special access pricing regulation. Moreover, as AT&T explained in its comments, dominant carrier tariffing of broadband services helps detect price squeezes.<sup>11</sup>

For its part, Qwest repeats the Bells’ claim that competitors often do not rely on Bell special access services and instead either self-provision or use CLEC facilities. Yet, as AT&T showed in its *Triennial Review* comments, (i) the Bells’ figures are fallacious, (ii) competitors generally have no alternative to Bell facilities, and (iii) self-provisioning is for the most part “not economically supportable, even if the numerous practical obstacles to such deployment did not exist.”<sup>12</sup> As the Supreme Court noted recently:

A newcomer could not compete with the incumbent carrier to provide local service without coming close to replicating the incumbent’s entire existing network, the most costly and difficult part of which would be laying down the “last mile” of feeder wire, the local loop, to the thousands (or millions) of terminal points in individual houses and businesses.<sup>13</sup>

Qwest also contends that the Bells would not create a price squeeze because they would earn less by serving retail customers themselves than by providing pricey special access to IXC’s. Yet, the Bells charge IXC’s exorbitant special access rates, not because end users are willing to pay those rates when passed on to them, but because end users *refuse* to pay them. In this manner, the Bells have prevented AT&T and other carriers from successfully entering the local large business markets.

Nor, contrary to Qwest’s argument, could IXC’s quickly reenter the local large business market after being squeezed out. Clearly, because the Bells have the power to squeeze out competitors, no sane competitor would reenter only to be squeezed out again.

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<sup>10</sup> Perhaps recognizing that it does indeed dominate the current market, SBC predicts that “emerging” services will someday provide competition, SBC Reply at 39, but as Qwest acknowledges, regulatory decisions cannot be based on “what might theoretically happen in the next several years,” Qwest Reply at 15.

<sup>11</sup> AT&T Comments at 52-57; AT&T Reply at 28-31.

<sup>12</sup> AT&T Comments in *Triennial Review* at 125-163.

<sup>13</sup> *Verizon Communications, Inc. v. FCC*, 535 U.S. \_\_\_\_ (May 13, 2002), slip opinion at 18.

## B. Mass Market Services

It is equally clear that the Bells are still dominant in the wholesale provision of mass market broadband services and in most or all local markets for retail mass market broadband services.

### 1. Retail

As Qwest notes, Commission decisions cannot be based on “what might happen in the next several years.”<sup>14</sup> Yet, the Bells wholly rely on speculation about what might happen over the coming years and fail to account for the actual market structure existing today.

The reality today is that satellite and wireless do not yet provide a viable broadband option.<sup>15</sup> Indeed, just recently, Pegasus Communications announced that it has given up on aggressively pursuing satellite-based Internet access after attracting only 5100 subscribers and suffering a \$15.7 million operating loss in fiscal 2001.<sup>16</sup> Faring no better, EchoStar has been forced to turn to DSL partnerships after its satellite broadband ventures failed.<sup>17</sup> And, StarBand Communications, “a pioneer in providing Internet access via satellite,” recently filed for bankruptcy protection.<sup>18</sup>

DSL is often the sole broadband option in some residential areas. Although the Bells’ economists predict that, by 2004, cable modem service will reach 92% of homes,<sup>19</sup> that is certainly not the case today.<sup>20</sup> Indeed, the State of California recently observed that “forty-five percent of Californians that live in cities with broadband service have DSL

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<sup>14</sup> Qwest Reply at 15.

<sup>15</sup> See, e.g., DIRECTV Comments at 2-7; AT&T Reply at 17; WorldCom Reply at 5-7.

<sup>16</sup> Communications Daily at 10 (May 3, 2002).

<sup>17</sup> *EchoStar Switches Broadband Gears* <[http://www.broadband-daily.com/subscribers/index.htm?article\\_id=3424](http://www.broadband-daily.com/subscribers/index.htm?article_id=3424)> (May 17, 2002).

<sup>18</sup> *StarBand Files for Bankruptcy, Casting the Blame on EchoStar*, Wall Street Journal (June 3, 2002).

<sup>19</sup> Harris Decl., BellSouth Reply at 7-8.

<sup>20</sup> See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Third Report, FCC 02-33, 2002 WL 186930 ¶ 46 (Feb. 6, 2002) (noting that cable modem service is unavailable to 30% of all U.S. homes). Because cable modem service has a limited footprint, it is not analogous to DBS in the video programming market. Despite a 19% market share, DBS is ubiquitous and thus provides competition for cable everywhere.

service as their *only* broadband option.”<sup>21</sup> Unsurprisingly, the Bells were able to initiate a 25% price increase last year. The Bells have a litany of excuses for the increase – including that the previous price was just a “promotional” offer,<sup>22</sup> the new price was lower than what Bells initially charged when DSL entered the market, and that the Bells have faced regulatory risks.<sup>23</sup> Indeed, Verizon contends that DSL prices should be another 40% to 50% higher.<sup>24</sup> But in a competitive market, a price leader can generally profitably increase prices only if costs have risen or the demand curve has shifted. The Bells do not argue that either of these things happened.

Moreover, because the Bells are the ones seeking a change in Commission policy, and because they are the ones who control the information about their costs, the burden is on them to demonstrate that what appears to be an exercise of market power is, in fact, consistent with competition. They have not even attempted to satisfy this burden. Instead, they criticize AT&T for not presenting evidence of former DSL customers returning to narrowband dial-up access, and thereby increasing Bell profits.<sup>25</sup> Yet, if the Bells were not profiting from increased sales/retention of second lines, they certainly would produce evidence rebutting AT&T’s showing. They have failed to do so.<sup>26</sup>

The evidence is clear that the Bells’ have pervasive market power over the provision of broadband services to small businesses nationwide.<sup>27</sup> Conceivably, cable may someday have a stronger presence in this market, but as Verizon candidly admits, “it is too early to know how this niche will develop.”<sup>28</sup> Among other things, the Bells’ dominance of these small business services is evidenced by the significantly higher prices they charge for

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<sup>21</sup> *Wireline Broadband*, Comments of the People of the State of California and the California Public Utilities Commission (filed May 3, 2002) at 28 (emphasis added).

<sup>22</sup> SBC Reply at 28; BellSouth Reply at 11; Qwest Reply at 10.

<sup>23</sup> Qwest Reply at 10. Verizon also notes that cable followed suit and increased prices as well. Reply Comments of Verizon at 17. However, a dominant firm is no less dominant just because other providers follow an anti-competitive price increase.

<sup>24</sup> *Verizon Executive Says DSL Should Cost More*, Dallas Morning News (June 5, 2002), quoting Verizon vice chairman and president, Lawrence T. Babbio, Jr.

<sup>25</sup> Qwest Reply at 11.

<sup>26</sup> Indeed, according to one analyst, SBC estimates that at least one-half of its customers with second lines disconnect those lines when they subscribe to DSL, while Verizon estimates the number is closer to three-quarters. Goldman Sachs, *Telecom Service: United States* (June 11, 2002) at 15.

<sup>27</sup> See, e.g., AT&T Comments at 40-41; Wis. PSC Comments at 4; Covad Comments at 15; ALTS Comments at 6; IP Communications Corporation Comments at 3; WorldCom Comments at 12.

<sup>28</sup> Verizon Reply at 2.

small business DSL services than for residential DSL services.<sup>29</sup> Because the Bells face less competition in serving small business customers than residential customers in many local markets, the Bells charge more (for functionally equivalent service).

SBC argues that many small business customers use T1 lines instead of DSL services, and that T1 prices are constrained by price cap regulation. But the Bells dominate the provision of T1 services as well through their control of special access lines, and they are attempting to eliminate price cap regulation in this proceeding. It is the ultimate in circular reasoning to argue that the presence of the very pricing regulations the RBOCs are attempting to eliminate justify the lifting of those regulations.

But the bottom line with respect to *all* of the Bells' broadband mass market services is that no across the board finding that the Bells' lack market power is remotely sustainable given the wide variation in localized competitive conditions. If there are local areas in which the Bells' lack market power in the provision of residential mass market services, the Bells must prove that with local market-specific facts. They have not even attempted to do so.

## 2. Wholesale

The Bells contend that, because wholesale and retail services are the same product aside from the amount ordered, there is no separate wholesale market. They are wrong. First, their premise is erroneous. Wholesale and retail services are distinct products. Whereas the wholesale service is simply a transport connection from the customer to the LEC's central office, the retail service is the transport connection bundled with Internet

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<sup>29</sup> Compare <http://qwest.com/residential/products/dsl/index.html> (Qwest offers 256 kbps residential DSL at \$39.95) with <http://www.qdslonline.com/prod/offer.html> (Qwest offers 256 kbps business DSL at \$139 per month). Compare [http://www.swbell.com/DSL\\_new/content/0,5289,4,00.html](http://www.swbell.com/DSL_new/content/0,5289,4,00.html) (SBC offers 1.5 Mbps/128kbps residential DSL at \$29.95 for first six months) with [http://www.swbell.com/DSL\\_new/content/0,5289,52,00.html](http://www.swbell.com/DSL_new/content/0,5289,52,00.html) (SBC offers 1.5 Mbps/128kbps business DSL at \$49.95). Compare [http://www.fastaccess.com/consumer/blsc\\_pricing.jsp](http://www.fastaccess.com/consumer/blsc_pricing.jsp) (BellSouth offers 1.5 Mbps/128kbps residential DSL at \$49.95) with <http://www.fastaccess.com/content/products.jsp> (BellSouth offers 1.5 Mbps/128kbps business DSL at \$79.95). Compare [http://www22.verizon.com/ForYourHome/dsl/order/NLF\\_vzolproductsprequalify.asp](http://www22.verizon.com/ForYourHome/dsl/order/NLF_vzolproductsprequalify.asp) (Verizon offers 1.5 Mbps/128kbps residential DSL at \$59.95) with <https://dslonline.bellatlantic.net/dsl/orderdsl.jsp?promotionCode=GBCOM&customerID=gbsdotcom&customerPassword=gbsdotcom&NPA=212&NXX=686&NUMB=2546> (Verizon offers 1.5 Mbps/128kbps business DSL at \$69.95).

access.<sup>30</sup> Indeed, Qwest itself recently explained that “ISPs combine[] Qwest’s DSL service with its Internet Access services in order to produce a bundled information service that can be provided to end-users,” and that constitutes “a new information service.”<sup>31</sup> Second, even if the Bells’ premise were correct, their conclusion is still erroneous. As the Commission has made clear, “advanced services sold to Internet Service Providers under volume and term discount plans . . . are inherently and substantially different from advanced services made available directly to business and residential end users.”<sup>32</sup>

Although the RBOCs contend that retail prices constrain wholesale prices, that is simply untrue.<sup>33</sup> Verizon questions why the RBOCs would want to eliminate their distributors,<sup>34</sup> but the answer is clear – the RBOCs would prefer that their own affiliates (or favored ISPs) dominate the retail markets. Beyond doubt, the RBOCs control the wholesale market.<sup>35</sup> Currently, with rare exceptions,<sup>36</sup> cable companies do not provide wholesale access, and they are under no obligation to do so.<sup>37</sup> Consequently, absent regulation, the Bells have the ability to thwart CLECs and ISPs by charging exorbitant wholesale rates.

Finally, there is a more fundamental reason why the Commission must preserve dominant carrier regulation. Given the high cost of using the Bells bottleneck facilities, local entry may not be viable in some states unless entrants can offer both data *and* voice over a single line.<sup>38</sup> If the Bells can deny CLECs the ability to bundle – and the ability to

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<sup>30</sup> See Earthlink Reply at 6.

<sup>31</sup> Qwest, *Petition for Declaratory Ruling*, WC Dkt. 02-77, Affidavit of Vice President Steven K. Starliper, ¶¶ 5, 7 (filed Apr. 3, 2002).

<sup>32</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Second Report and Order, 14 FCC Rcd. 19237, ¶ 8 (1999); see also Earthlink at 5 & n.16.

<sup>33</sup> AT&T Comments in *Wireline Broadband*, CC Docket No. 02-33, at 59 (filed May 3, 2002) (“Qwest offers ‘unbundled’ basic DSL service for \$21.95 per month . . . or \$31.95 per month but has proposed a wholesale rate of \$45.48 per month.”).

<sup>34</sup> Verizon Reply at 20.

<sup>35</sup> AT&T Reply at 25 & n.107 (listing other commenters who have demonstrated RBOCs’ dominance); USLEC Reply at 13-14; AOL Reply at 9-13; DIRECTV Reply at 2-5; Earthlink Reply at 2-7; GSA Reply at 7-8.

<sup>36</sup> Verizon Reply at 18-19.

<sup>37</sup> AT&T Reply at 26 & n.110 (listing other commenters).

<sup>38</sup> See AT&T Reply at 27; AT&T Comments at 50-51; see also TCCFUI and Plano Comments at 5 (“Deregulation of the incumbent LECs with regard to broadband services” would impede competition “not only in the broadband service market but also in the local exchange market.”).

spread the costs of access over multiple services – CLECs will be unable to attempt to challenge the ILECs' local *voice* monopolies in those areas.

## **II. ANY REGULATORY EXCEPTION FOR BROADBAND WOULD BE WHOLLY ARBITRARY AND WOULD CREATE AN ENORMOUS LOOPHOLE.**

In any event, aside from the fact that the Bells dominate the advanced services markets, there is an additional reason why the Commission should not deregulate “broadband.” No one has provided a workable definition of broadband.

Indeed, the Bells have been unable to agree on a definition. Verizon defines broadband as “either a service that uses a packet-switched or successor technology, or a service that includes the capability of transmitting information that is generally not less than 200 kbps in *both* directions.”<sup>39</sup> In contrast, SBC asserts that mass market broadband services are “capable of providing customers with transmission speeds in excess of 200 kbps in *one* direction and that typically are integrated with content or some other functionality of an information service”;<sup>40</sup> SBC has chosen not to define broadband for the large business market. BellSouth has taken a different tact altogether and has defined broadband as “digital data,” whatever that might mean.<sup>41</sup> And finally, Qwest refuses to offer any definition at all, or even to adopt one of the other Bells’ definitions. Thus, despite their emphatic insistence that broadband is different from narrowband, the Bells are unable to agree on why or how.

Moreover, none of the Bells has attempted to justify any of these definitions or approaches. SBC and Verizon, for example, offer no explanation as to why 200 kbps is the magic number. Similarly, BellSouth has not suggested any reason why “digital” services are somehow special – either under the Telecommunications Act or economic theory. And Qwest has not explained how its “we know it when we see it” theory of broadband will translate into a workable regulatory structure.

The bottom line is simple. None of these definitions or approaches makes any sense, and adopting any of them would grant the Bells virtually unlimited discretion to exempt services from essential regulation.

## **CONCLUSION**

No Bell denies that dominant carrier regulation is appropriate when a provider has market power. It is unmistakably clear that the Bells dominate the large business market and much of the mass market. Indeed, where the Bells did not cede the first mover status

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<sup>39</sup> Verizon Comments at 9 (emphasis added).

<sup>40</sup> SBC Comments at 19 (emphasis added).

<sup>41</sup> BellSouth at 15.



to cable, DSL has dominated.<sup>42</sup> In addition, any attempt to create a regulatory exception for broadband would be arbitrary and unworkable. For these reasons, the Commission should reject the Bells' requests for nondominant treatment and clarify that any future Bell petitions for exemptions from tariffing and other dominant carrier regulations will be denied absent clear and convincing proof that the Bells lack any relevant market power in the particular local markets at issue.

Finally, it is important to recognize the Bells' baseless non-dominance push for the "stalking horse" that it so clearly is. The Bells' comments are virtually devoid of argument – much less proof – that the modest tariffing, cost support and other "dominant carrier" regulations at issue in this proceeding impose significant burdens, and the Bells' virtually ignore the transparency and other clear public interest benefits that these regulations provide. Indeed, the Bells have stressed that most of the "broadband" services at issue here – most notably retail mass market broadband services, such as their DSL-based services – are information services that are *not even subject to* the dominant carrier rules at issue here. Instead, the Bells' comments focus primarily on *other* Title II regulations that are not at issue here. That is because the Bells' transparent hope here is that their rhetoric in this proceeding will produce overbroad and slipshod market power findings that the Bells can then export to other Commission and judicial proceedings.

In short, it is clear that SBC's petition should be denied and that the Commission can make no across-the-board finding of nondominance based on this record.

Sincerely,



cc: P. Arluk  
C. Carpino  
B. Koerner  
J. Miller  
T. Navin  
B. Olson  
J. Stanshine  
R. Tanner

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<sup>42</sup> See, e.g., Reply Comments of People of the State of California and the California Public Utilities Commission at 15 ("Unlike other states of the nation, or the country as a whole, DSL has outpaced cable modem services in market share in California.")

CC Docket No. 01-337  
Regulatory Requirements for ILEC Broadband Telecom Services

## Summary

### *Do ILECs possess market power in the provision of broadband services?*

- ❖ The Commission cannot make a blanket determination that all ILEC broadband services are non-dominant based solely on the ILECs' low national average market shares.
- ❖ When the relevant local markets are examined there is considerable evidence of pervasive ILEC market power.
- ❖ Due to the ILECs pervasive market power over the provision of broadband services, the Commission's dominant carrier tariffing, cost support, and related requirements must continue to apply.
- ❖ Deregulation of ILEC broadband services cannot be justified under an approach that ignores market power in pursuit of undefined "regulatory parity" or increased broadband deployment goals.

## ILECs Dominant Market Share

### *Large Business Services*

- ❖ ILECs do not provide a large share of the large business services market on a national basis because they are still largely confined by § 271 to providing such services on an intraLATA or “local” basis.
- ❖ The FCC must focus on the markets where the ILECs’ true power has been allowed to manifest itself, local, point-to-point frame relay and ATM services provided within LATAs.

❖ “Local” Large Business Data Services		
	<u>Frame Relay Share</u>	<u>ATM Share</u>
ILECs	91.8%	96.2%
CLEC/IXC	8.2%	3.8%

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**ILEC Control of Bottleneck Facilities**

***ILECs dominance in the provision of special access services is the direct source of their dominance over retail markets***

- ❖ While CLECs would prefer to self-provide last-mile facilities, the ILEC remains the only source for these facilities in the majority of situations.
- ❖ The NYPSC recently ruled that Verizon remains the “dominant” provider of special access in all of NY state, including NYC – the most competitive market in the country.
- ❖ ILECs use control over bottleneck special access services to unfairly disadvantage rivals via high prices, poor quality, and delay.
  - There are numerous areas where the ILEC special access charges incurred by AT&T are higher than the *retail* price the ILEC is charging customers for frame relay and ATM ports.
  - Non-price discrimination is well documented in FCC’s Special Access Performance Measurement and Standards proceeding. NYPSC comments confirm that ILECs’ “uneven performance threaten§ to undermine competition[.]”

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Regulatory Requirements for ILEC Broadband Telecom Services

## Internet Access Market

### ***Mass Market Services – Retail***

*Intermodal competition does not exist in all areas or for all customers, therefore, a disaggregated analysis of each relevant market is required*

- ❖ There is a lack of full intermodal competition in the small business and residential markets.
- ❖ There is almost no intermodal competition for small business customers
- ❖ About 40% of all US zip codes have only a single high-speed service provider or no high-speed service provider at all.
- ❖ Cable modem service is not available to 30% of US homes.
- ❖ High-speed wireless services are not widely available and high-speed satellite services are experiencing technical/security problems.

CC Docket No. 01-337  
Regulatory Requirements for ILEC Broadband Telecom Services

## Internet Access Market

### *Mass Market Services – Wholesale*

*The product offered in the wholesale market is the input necessary to provide retail Internet access service, namely the provision of broadband last-mile transport.*

- ❖ ILECs control almost all of the last-mile facilities to which ISPs seeking to provide residential and small business broadband services can turn.
- ❖ In its *UNE Remand Order* the FCC concluded that CLECs, in general, could not self-provide loops and transport or acquire such facilities from third-parties and that all transport facilities must be unbundled because the factual record demonstrated that the ILECs are generally the only realistic and reliable source of transport, even in large metropolitan areas.
- ❖ Again, without the ability to bundle – and spread the costs of access over multiple services – the CLECs will be unable even to attempt to challenge the ILECs' local voice monopolies in many areas.

## Dominant Carrier Regulations

### *ILECs pervasive market power requires continued application of dominant carrier regulations*

- ❖ The tariffing requirement may deter some market power abuses in the first instance, because the transparency that tariffing provides makes it more likely that misconduct will be detected and punished.
- ❖ Tariffing, together with the Computer Inquiry rules, also helps prevent ILECs from unilaterally raising ISP rivals' transaction costs (and delaying entry) by drawing out the negotiation process.
- ❖ Also, as the FCC recognized just four years ago, federal tariffing of advanced services has enabled the Commission "successfully [to] forestall [] attempts by incumbent LECs to shift costs to monopoly services in order to justify rates that effect a price squeeze."